U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: AUG 0 8 2014

Office: TEXAS SERVICE CENTER

FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The petitioner's priority date established by the petition filing date is July 30, 2012. The director subsequently issued a request for evidence (RFE). After receiving the petitioner's response to the RFE, the director issued his decision on September 3, 2013. On appeal, the petitioner submits a brief with additional documentary evidence. For the reasons discussed below, we uphold the director's ultimate determination that the petitioner has not established her eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the decision to deny the petition, the court took issue with the evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which [we] did)," and if the petitioner did not submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as [we] concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has not satisfied the regulatory requirement of three types of evidence. *Id.*

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Certified Translations

Throughout the proceeding, the petitioner submitted foreign language documents in which the translation into English does not comply with the terms of 8 C.F.R. § 103.2(b)(3), which states:

> *Translations.* Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Specifically, while the petitioner submitted certified translations of the abstract in and her Master's Degree from the translator did not provide a certification that complies with 8 C.F.R. § 103.2(b)(3) for the reference letter from of the Further, the petitioner submitted uncertified translations of the diploma awarding the petitioner as the trainer of the petitioner's work-record card, Certificates from Ukrainian committees, and all of the foreign language published material. Accordingly, the evidence that is not accompanied by a certified translation is not probative and has diminished evidentiary weight in this proceeding.

B. One-time Achievement

The petitioner asserts various one-time achievement claims throughout the proceedings before the director and on appeal. Within the initial filing, she claims world records she set in multiple events in bench press record. In response to the director's RFE she claims a world record and a first place competition finish, both in constitute her one-time achievement. On appeal, the petitioner claims that the meet the one-time achievement requirement. The petitioner's appellate brief asserts that she won the competitions at the junior and women's level respectively, even though her age placed her in the age-limited junior group.

The director first acknowledged that the petitioner received the World Record Achievement Award from the in her weight class and that she set a weightlifting world record in her weight class, but noted that the record of proceeding lacked evidence demonstrating these records constituted major, internationally recognized awards in accordance with the regulation at 8 C.F.R. § 204.5(h)(3).

With regard to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), a Federal Court recently stated:

> The . . . debate over what constitutes a "major" international award [is one] that neither party can hope to win. Common experience draws no line of demarcation between those

> awards that are "major" and those that are not. The applicable law in this case draws no clearer line, other than to establish that some awards are "major, international recognized award[s]" and others are "lesser nationally or internationally recognized prizes or awards". 8 C.F.R. § 204.5(h)(3) & (3)(i). Nothing in either the INA or the regulations implementing it explains how USCIS or a reviewing court is to differentiate between "major" and lesser awards. In legislative history, Congress named the Nobel Prize as its sole example of a major, internationally recognized award that would by itself demonstrate "extraordinary ability." *Kazarian,* 596 F.3d at 1119 (citing 1990 U.S.C.C.A.N. 6710, 6739). No one suggests that an alien must win a Nobel Prize to qualify, and no one suggests that [the petitioner's] awards are on par with a Nobel Prize. What awards less prestigious and recognized than the Nobel Prize qualify as major, international awards is a question that the law does not answer. There is little question, moreover, that Congress felt it unnecessary and perhaps inadvisable to define "major" in this context. It entrusted that decision to the administrative process.

Rijal v. U.S. Citizenship & Immigration Services, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) *aff'd,* 683 F.3d 1030 (9th Cir. 2012); *see also Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *5 (D.D.C. Dec. 16, 2013). The *Rijal* court also determined that USCIS did not act arbitrarily and capriciously when it:

> considered the relevant factors and articulated a rational connection between the facts it found and the choice it made. USCIS explicitly considered the awards and all of the evidence [the petitioner] submitted to support his claim that they were major, international awards. USCIS articulated a rational connection between those facts and its conclusion that his awards were not "major." [Evidentiary citation omitted.] Another adjudicator might have come to a different conclusion, but that is irrelevant. Unless the court can conclude that no rational adjudicator would have come to that conclusion, the USCIS did not act arbitrarily and capriciously.

Id. at 1345-46 *aff'd*, 683 F.3d 1030; *see also Visinscaia*, 2013 WL 6571822, at *5.

The petitioner supports her one-time achievement claim by providing the following:

- Documentation of the records and certificates of her placement in various competitions;
- A list of her competition finishes from
- Two newsletters from
- Competition results from the organization for the September 2005 competition;
- An article from magazine in a foreign language for which the petitioner did not submit a certified translation; and
- An article from a foreign language newspaper for which the petitioner also did not submit a certified translation into English.

The translations of the above articles do not comply with the terms of 8 C.F.R. § 103.2(b)(3). Accordingly, these articles are not probative and have diminished evidentiary weight in this proceeding. Furthermore, the petitioner did not provide evidence that these publications constitute international media, which would lend support to her assertion that her awards and prizes enjoy international recognition.

The petitioner also submitted multiple letters written in a foreign language on appeal; none of which are accompanied by a certified translation into English that complies with 8 C.F.R. § 103.2(b)(3). As these letters do not comply with the regulation for documents in a foreign language, each letter bears limited evidentiary value.

We therefore concur with the director's ultimate conclusion that the petitioner has not demonstrated a qualifying one-time achievement. Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner did not provide evidence to establish that any of her achievements constitute a qualifying one-time achievement that is, a major, internationally recognized award, as her finish was not reported in top international media or otherwise recognized beyond the competition. In addition, some achievements were age-limited to the junior category and were not open to the petitioner's entire field such that it can be considered one of the top awards in the field.

C. Evidentiary Criteria[2]

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The director recognized that the petitioner received awards and again set records in her weight class regarding the regulation at 8 C.F.R. § 204.5(h)(3)(i). However, the director determined that such achievements in the junior and sub-junior divisions did not constitute nationally or internationally recognized awards for excellence in the petitioner's field as these competitions were age-limited excluding those performing at the professional level. On appeal, the petitioner notes that not all of her awards or prizes are at the junior level.

The petitioner submitted copies of several awards or records that she set for weightlifting in her weight class and age group. The newsletters from from note that the petitioner placed first in the and that she set a sub-junior weightlifting record and a junior level record. However, the petitioner did not submit evidence demonstrating that this coverage in newsletters constitutes national or international recognition of her achievements. The petitioner provided no information relating to the circulation or the distribution data of this publication and thus, the petitioner may not rely on the newsletters from to establish that these achievements are nationally or internationally recognized.

On appeal the petitioner also submits the previously discussed articles from and for which she did not submit a certified translation into English in accordance with 8 C.F.R. § 103.2(b)(3). Accordingly, these articles are not probative and have diminished evidentiary weight in this proceeding. In addition, the petitioner did not provide information relating to the circulation or the distribution data of these publications that might establish that the achievements noted in the articles are nationally or internationally recognized.

The petitioner also submitted multiple letters on appeal, for which the petitioner did not submit a certified translation into English. As these letters do not comply with the regulation for documents in a foreign language, each letter bears significantly diminished evidentiary value.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that she is a member of more than one association in her field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements (in the plural) of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the petitioner to claim that she

was admitted to the association because of her outstanding achievements; the petitioner must show that the association requires outstanding achievements of all prospective members. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner's single membership as a member of the Ukraine team was not an association that required outstanding achievements as an essential condition for admission pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii). The appellate brief indicates that this membership "required the beneficiary to compete in the Ukrainian Championships and placed [sic] in the top three." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The initially submitted evidence is in a foreign language and the petitioner did not submit a certified translation that complies with the regulation at 8 C.F.R. § 103.2(b)(3). Notwithstanding this deficiency, the evidence in the form of the petitioner's work record card reflects that she was a "sportsman-instructor in the of Ukraine." The petitioner did not submit evidence establishing that the Ukrainian team requires outstanding achievements of its members in accordance with the regulatory requirements.

Even if the petitioner demonstrated that this membership met the plain language requirements of this criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in "associations" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). *See also Visinscaia*, 2013 WL 6571822, at *8.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner's work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner did not submit probative evidence demonstrating that the published material about her appeared in one of the required publication types; in professional or major trade publications or other major media. The director also noted the publications' scope appeared to be of a regional nature and that the mere mention of the petitioner's name in the publications was not generally sufficient to meet the plain language requirements of this criterion at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner initially submitted a portion of the book, which is in a foreign language. While it appears that the petitioner is noted within this book, the translator did not date or sign the accompanying translation. This documentation does not comply with 8 C.F.R § 103.2(b)(3) and, thus, will not serve as probative evidence within these proceedings. Furthermore, the evidence fails to reflect an author of the book, and as such does not meet the plain language requirements of this criterion. It is also the petitioner's burden to provide sales data or other evidence that the book can be considered "major media." The record lacks such evidence.

On appeal the petitioner notes the previously discussed articles from for which the petitioner did not submit a certified translation into English in accordance with 8 C.F.R. § 103.2(b)(3), and, thus, these articles consequently bear significantly diminished evidentiary value. In addition, the petitioner relies on the article regarding the petitioner's junior and sub-junior world championships. The record lacks any documentation to establish that is a professional or major trade publication or other major media.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. Summary

The petitioner has not satisfied the antecedent regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination. [3] Rather, the proper conclusion is that the petitioner has not satisfied the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[3] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).